

Interoffice Communication

To Directors/Department Heads

From R. T. Ferrell

Date June 3, 1983

Subject OSHA Regulation

A recent article in Chemical Week regarding OSHA activities is attached for your review.

We need to keep moving forward on our programs, both work practice and engineering, in the areas of benzene, methyl chloride, ethylene oxide and noise.

RT Ferrell
R. T. Ferrell

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Attachment

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OSHA shifts to more, not less, regulation

Since the resignation of Environmental Protection Agency Administrator Anne M. Burford and her top lieutenants, members of Congress and the media are devoting a lot more attention to EPA's sister agency, the Occupational Safety and Health Administration. But even before the EPA controversy exploded, Thorne G. Auchter, Assistant Labor Secretary for OSHA, began backing away from the Reagan Administration's promise of wholesale regulatory relief for chemical and other industries. And now, say some agency watchers, Auchter and his top aides are working even harder to demonstrate that their mission at OSHA is worker protection, not deregulation. Says one chemical industry lobbyist: "Auchter certainly doesn't want OSHA to turn into a caricature of EPA."

OSHA has clearly stepped up its activity level in recent weeks. In surprise moves, the agency announced plans to issue more stringent rules for benzene and asbestos, and circulated draft copies of proposals calling for revised lead and ethylene oxide standards. OSHA is also backing away from plans to loosen up on its carcinogen policy, guidelines that order the agency to set tight regulations for any suspected carcinogen. And agency officials have been noticeably more solicitous with industrial unions, their chief critics for the last two years.

'Fuller awareness.' Many observers say that the flurry of activity means that OSHA has taken lessons from the EPA flap to heart. But OSHA officials insist there is much more at play. They note that after years of developmental spadework by the agency's staff, reports on key health and safety issues have finally filtered to Auchter's level. And they say that Auchter, a former construction company executive with little expertise in either government or the health sciences, now has a "fuller awareness" of health issues than he had when he came to the agency in March 1981.

When Auchter joined OSHA, he inherited an agency that was being pushed by the Reagan Administration into an ever-stronger deregulatory stance. The Administration already had released its so-called "hit list" of 100 major regulations from several agencies, including

OSHA, that would be reworked to provide regulatory relief to industry. Auchter, in full support, launched a review of rules dealing with hearing conservation, lead exposure, workers' access to medical and exposure records, hazardous materials labeling, and a full gamut of other health regulations. His announcement that OSHA would review the hard-won cotton-dust regulations touched off a firestorm that soon brought hundreds of angered textile workers to the steps of the Labor Dept. in protest.

In his first year and one-half at OSHA, Auchter left most of the daily

As OSHA calls for improved worker protection, industry and OMB are saying 'enough'

administration of the health standards program to then-deputy assistant labor secretary for OSHA, Mark Cowan. Although he did pay some attention to creating new standards—for example, he ordered staff work on stronger construction standards—he concentrated primarily on making the enforcement burden more bearable for industry. During that time, he instituted a new

Auchter is surprising labor, industry and OMB.



system to exempt employers with good records from surprise OSHA safety checks. He also took the lead in expanding the agency's policy of trying to amicably settle cases with cited employers rather than go through lengthy and costly litigation.

But Cowan's departure in late 1982 to become chief of staff for Labor Secretary Ray Donovan marked a crucial turning point for both the agency and Auchter. By that juncture, much of the time-consuming background research needed for new rules was complete, and Auchter shifted over to a more active role as a regulator. Notes one industry consultant: "He became more interested in standards as things were starting to move."

Fluttering. Since then, a number of Auchter's moves have surprised OSHA watchers not only in labor and industry but also in the Office of Management and Budget. They note that the new proposed rules have failed to deliver on the Reagan Administration's campaign promises of regulatory relief. In September 1982, for example, Auchter made only moderate cutbacks when re-drafting a Carter Administration hearing-conservation standard. The action touched off a six-month flap with OMB's regulatory reviewers, who contended that the agency had not gone far enough in easing requirements for medical monitoring.

And now, Auchter is locked in a similar battle with OMB over his apparent reversal on cotton-dust regulations. The OSHA administrator is calling for in-plant engineering controls to protect textile workers against debilitating lung ailments, while both industry and the White House contend that mask-like respirators provide workers sufficient protection.

Thus far, however, the agency has only adopted major final rules for hearing conservation and arsenic, a situation which has left its regulatory program open to sharp attack from critics in Congress. At hearings in mid-March, for example, Representative David R. Obey (D., Wis.), a key member of the House Labor Appropriations subcommittee and one of OSHA's principal watchdogs, grilled Auchter about what he deemed the agency's failure to act on ethylene oxide, dibromochloropropane, asbestos, ethylene dibromide, formaldehyde, benzene, and other important health and safety rules. "We've had two [new] major standards a year on the average under three previous administrations," Obey said. "And we've had goose eggs under [Auchter's] ad-

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ministration," noting that the agency's two rulings to date have been principally reworks of Carter-era regulations.

But not everyone blames OSHA for its current rulemaking pace. Representative Albert Gore (D., Tenn.), chairman of the House Science and Technology Oversight and Investigations Subcommittee, who earlier scored the agency for its refusal to issue health warnings about formaldehyde, is now, along with Representative Barney Frank (D., Mass.), investigating OMB's efforts to weaken OSHA's proposed cotton-dust rule.

Better relations. Auchter, meanwhile, is trying to develop more amicable relations with labor. He has backed off from his once-frequent verbal attacks on some of the unions' leaders, and, instead, is inviting them to participate early in the rulemaking procedure. For example, an April petition from the

Remarks a chemical lobbyist: Auchter 'doesn't want OSHA to become a caricature of EPA'

Health Research Group and from chemical workers' unions for strong benzene regulations triggered a May 2 meeting with Auchter who indicated that he would move benzene up on OSHA's regulatory agenda. Also, on asbestos, Auchter invited his chief critics, Sheldon W. Samuels, safety director of the AFL-CIO's Industrial Union Dept., and George H. R. Taylor, head of the AFL-CIO's safety program, to meet with him anytime. Samuel's response: "We hope that constructive relationships can be re-established."

OSHA has promised that within the next few months it will issue carefully drawn decisions on carcinogens, benzene, lead, cotton dust, construction standards, and other rules. But labor leaders are not ready to rejoice as yet. Margaret Seminario, industrial hygienist for the AFL-CIO, describes much of the OSHA activity as "public relations." She and other labor leaders are reserving judgment until they see if OSHA's promises of stronger standards actually do result, as Seminario puts it, "in adequate protection for workers in a timely fashion."

Industry representatives, too, are not ready to either praise or condemn the "new" OSHA. But they are anticipating a lot more movement. Summarizes Patrick Hurd, safety and health director for the National Paint and Coatings Assn.: "It's going to be a busy, busy, summer." □

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